



IT IS ORDERED as set forth below:

Date: January 19, 2010

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 07-65834

Sabahudin Hibic and Afrondita Hibic,

CHAPTER 13

Debtors.

JUDGE MASSEY

Sabahudin Hibic and Afrondita Hibic,

Movants,

v.

CONTESTED MATTER

Drive Financial Services,

Respondent.

ORDER ON OBJECTION TO CLAIM

Debtors' amended plan, which was confirmed on June 27, 2007, provides for payment in full of the allowed secured claim of Respondent, which was in the amount of \$17,393.47. On November 24, 2009, Debtors objected to the claim on the ground that the debt was not "valid" because "upon information and belief the collateral has been in an accident and declared a total

loss by the insurance company.” The relief demanded was that “the Chapter 13 trustee cease funding this claim until it is amended to reflect the unsecured deficiency, if any, after the insurance proceeds are applied to the claim.”

It is doubtful that Debtors are entitled to the relief stated in the objection. Determination of secured status is an proceeding under section 506(a) of the Bankruptcy Code, not an objection to the allowance of a claim under section 502. The operative date for purposes of determining whether a claim is secured is the confirmation date. Thus, Debtors’ objection appears to be a disguised post-confirmation modification to the confirmed plan that is not permitted under section 1329.

Debtors noticed a hearing on the objection for January 6, 2010. Respondent did not appear at the hearing. In mid-January 2010, Debtors’ counsel submitted a proposed order, a copy of which is attached to this Order, that would have disallowed the objection in its entirety. The objection did not request such relief. Submitting an order than grants materially different relief from that which was requested in a motion or complaint raises very, very serious questions. Unless there is immediately forthcoming an explanation for submitting the proposed order granting relief not requested, the objection to the claim is not only DENIED, it will stand denied with prejudice.

The Clerk is directed to serve a copy of this order on Debtor, Debtor’s counsel, the Chapter 13 Trustee and Respondent at the address stated in the objection.

END OF ORDER

EXHIBIT TO ORDER
**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:)	
)	CASE NO. 07-65834-JEM
SABAHUDIN HIBIC)	
AFRODITA HIBIC,)	CHAPTER 13
Debtor(s).)	
<hr style="border-top: 1px dashed black;"/>		
SABAHUDIN HIBIC)	
AFRODITA HIBIC,)	
)	
Movant(s),)	
)	CONTESTED MATTER
v.)	
)	
DRIVE FINANCIAL SERVICES,)	
)	
Respondent.)	

**ORDER ON OBJECTION TO PROOF OF CLAIM
OF DRIVE FINANCIAL SERVICES (#1)**

This matter arose upon Debtors' "Objection to Proof of Claim of Drive Financial Services (#1)" ("Objection"), which came before the Court January 6, 2010. Debtor contends that notice was properly given, that no response or objection was timely filed or appearance entered at the hearing by Respondent. Therefore, for good cause shown and by default, it is hereby

ORDERED that Debtor's Objection is GRANTED. Claim number one filed by Respondent is DISALLOWED in its entirety.

IT IS SO ORDERED this _____ day of _____, 2010.

JAMES MASSEY
UNITED STATES BANKRUPTCY JUDGE
(Signatures continued on next page)